

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 84 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VINOD BHALCHANDRA JOSHI

Appearance:

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Petitioner

MR AD SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 04/07/97

ORAL JUDGEMENT

Application at Exh.9 came to be given by the respondent accused, in Special Case No.1 of 1990, in the Court of Special Judge, Surat, challenging the validity of the sanction of prosecution given under the Prevention of Corruption, 1988, on the ground that, it is signed not only by the Deputy Secretary, but it is the Deputy

Secretary who has sanctioned the prosecution. On reading the sanction, that seems to be the position.

The ld. Special Judge, Surat, by his order dated 17.1.1997, allowed the application at Exh.9 and held that, it is not a valid sanction.

Challenging the aforesaid order, the present revision application came to be filed by the State, and as per the direction given by this Court, an affidavit is filed by Mr.K.M.Kadia, Under Secretary, Health and Family Welfare Department, Govt. of Gujarat. In paragraphs 2 and 3 of the affidavit, the details are given as to how the file to be dealt with. It reveals that the file had gone to the Minister concerned and thereafter, even the Addl. Chief Secretary, heading the Department has also approved the proposal. The Addl. Chief Secretary is certainly empowered to remove the accused respondent as he is a Class-II employee. However, the sanction when read is not found to be containing any reference whatsoever to any of these details and as if this is not enough, in the last paragraph, the signing authority has stated that, it is he who is giving the sanction. The authority refers himself by his name, Shri R.U.Kumar and, therefore, there is no manner of doubt on reading the sanction that, it is the Deputy Secretary, Shri R.U.Kumar who is giving the sanction.

No doubt, he has relied upon Rule 13 of the Business of Government of Gujarat brought into force in 1990. According to that Rule, a Deputy Secretary may be empowered, but he has to declare that he has the authority to exercise that power. Had that been given by the Deputy Secretary in exercise of this power, arguably, he could have said to the prosecution that, he is empowered to do so. Even then, the question would still remain as to one authority envisaged by the Act could have relegated the power to anybody else. I am not going further into the question because, there is no point arising in this matter.

Coming back to the matter, it is obvious that, having been given by Shri Kumar, Deputy Secretary, any attempt made later on by way of affidavit in support of the revision application, cannot be the sanction. Hence, the decision taken by the trial Court cannot be said to be wrong in any manner. It is for the Department to consider the question of grant of sanction in accordance with law again. However, the sanction produced before the trial Court cannot be said to be the sanction. Therefore, the order of the trial Court is not required

to be interfered with. The result, therefore, is that
the application fails. It is rejected. Rule is
discharged.

sreeram.